

KEVIN V. RYAN (CSBN 118321)
United States Attorney

JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division

STEVEN J. SALTIEL (CSBN 202292)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-6996
FAX: (415) 436-6748

Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALAN AITKEN and LINDA PITZER-
DONATO,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. C 06-00803 CW

**STIPULATION FOR COMPROMISE
SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT
CLAIMS PURSUANT TO 28 U.S.C. §
2677**

It is hereby stipulated by and between the undersigned plaintiffs and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay the sum of One Hundred Fifty Thousand dollars (\$150,000), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,

SETTLEMENT AGREEMENT
No. C 06-00803 CW

1 damage to property and the consequences thereof, resulting, and to result, from the subject matter
2 of this settlement, including any claims for wrongful death, for which plaintiffs or their
3 guardians, heirs, executors, administrators, or assigns, and each of them, now have or may
4 hereafter acquire against the United States of America, its agents, servants, and employees.

5 3. Plaintiffs and their guardians, heirs, executors, administrators or assigns hereby agree to
6 accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and
7 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
8 nature, including claims for wrongful death, arising from, and by reason of any and all known
9 and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the
10 consequences thereof which they may have or hereafter acquire against the United States of
11 America, its agents, servants and employees on account of the same subject matter that gave rise
12 to the above-captioned action, including any future claim or lawsuit of any kind or type
13 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
14 Plaintiffs and their guardians, heirs, executors, administrators or assigns further agree to
15 reimburse, indemnify and hold harmless the United States of America, its agents, servants, and
16 employees from and against any and all such causes of action, claims, liens, rights, or subrogated
17 or contribution interests incident to or resulting from further litigation or the prosecution of
18 claims by plaintiffs or their guardians, heirs, executors, administrators or assigns against any
19 third party or against the United States, including claims for wrongful death.

20 4. This stipulation for compromise settlement is not, is in no way intended to be, and should
21 not be construed as, an admission of liability or fault on the part of the United States, its agents,
22 servants, or employees, and it is specifically denied that they are liable to the plaintiffs. This
23 settlement is entered into by all parties for the purpose of compromising disputed claims under
24 the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

25 5. It is also agreed, by and among the parties, that the respective parties will each bear their
26 own costs, fees, and expenses and that any attorney's fees owed by the plaintiffs will be paid out
27 of the settlement amount and not in addition thereto.

28 6. It is also understood by and among the parties that pursuant to Title 28, United States

SETTLEMENT AGREEMENT

No. C 06-00803 CW

Code, Section 2678, attorney's fees for services rendered in connection with this action shall not exceed 25 per centum of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

8. The provisions of California Civil Code Section 1542 are set forth below:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Plaintiffs having been apprized of the statutory language of Civil Code Section 1542 by their attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights he/she may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs understand that, if the facts concerning plaintiffs' injury and the liability of the government for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, the Agreement shall be and remain effective notwithstanding such material difference.

9. Payment of the settlement amount will be made by check drawn on the Treasury of the United States for One Hundred Fifty Thousand dollars (\$150,000) and made payable to Alan Aitken and Linda Pitzer-Donato, plaintiffs, and Furtado, Jaspovice & Simons, plaintiffs' attorneys. The check will be mailed to plaintiffs' attorneys at the following address: 22274 Main Street, Hayward, CA 94541. Plaintiffs' attorney agrees to distribute the settlement proceeds among the plaintiffs, and to obtain a dismissal of the above-captioned action with prejudice, with each party bearing its own fees, costs, and expenses.

\\

\\

\\

\\

\\

\\

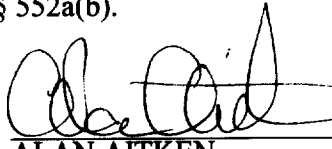
\\

SETTLEMENT AGREEMENT

No. C 06-00803 CW

1 10. The parties agree that this Stipulation for Compromise Settlement and Release, including
2 all the terms and conditions of this compromise settlement and any additional agreements
3 relating thereto, may be made public in their entirety, and the plaintiffs expressly consent to such
4 release and disclosure pursuant to 5 U.S.C. § 552a(b).

5
6 Dated:

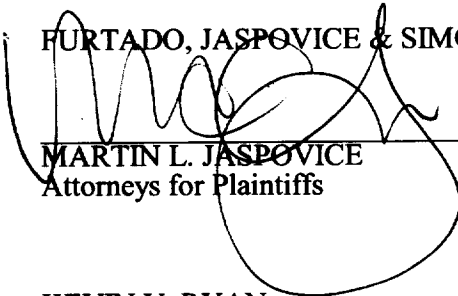

ALAN AITKEN

7
8 Dated:

LINDA PITZER-DONATO


9
10 Dated:

FURTADO, JASPOVICE & SIMONS

11
12 
MARTIN L. JASPOVICE
Attorneys for Plaintiffs

13
14 Dated: 1/8/07

KEVIN V. RYAN
United States Attorney

15
16
17 
STEVEN J. SALTIEL
Assistant United States Attorney

18
19 IT IS SO ORDERED.

20 DATE:

21 CLAUDIA WILKEN
United States District Judge

1 10. The parties agree that this Stipulation for Compromise Settlement and Release, including
2 all the terms and conditions of this compromise settlement and any additional agreements
3 relating thereto, may be made public in their entirety, and the plaintiffs expressly consent to such
4 release and disclosure pursuant to 5 U.S.C. § 552a(b).

5
6 Dated:

ALAN AITKEN

7
8 Dated:

LINDA PITZER-DONATO

9
10 Dated:

FURTADO, JASPOVICE & SIMONS

11
12 MARTIN L. JASPOVICE
13 Attorneys for Plaintiffs

14 Dated:

KEVIN V. RYAN
United States Attorney

15
16
17 STEVEN J. SALTIEL
18 Assistant United States Attorney

19 IT IS SO ORDERED.

20 DATE:

CLAUDIA WILKEN
United States District Judge